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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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7590

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EXAMINER

WELLS, LAUREN Q

ART UNIT

PAPER NUMBER

1617

DATE MAILED: 03/27/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/557,376

Applicant(s)

BORMANN ET AL.

Examiner

Lauren Q Wells

Art Unit

1617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 February 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 10-27 is/are pending in the application.
- 4a) Of the above claim(s) 13 and 19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 10-12, 14-18 and 20-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Art Unit: 1617

DETAILED ACTION

Claims 10-27 are pending. Claims 13 and 19 are withdrawn from consideration, as they are directed toward non-elected subject matter. The Amendment received February 11, 2002, Paper No. 9, amended claims 10-12, 14-18 and added claims 19-27.

Response to Applicant's Arguments/Amendment

The Applicant's amendment filed February 11, 2002 (Paper No. 9) is sufficient to overcome the rejection of claims 10-12 and 14-18 made by the Examiner under 35 USC 112.

Applicant's arguments with respect to claims 10-12 and 14-18 made by the Examiner under 35 USC 103 have been considered but are moot in view of the new ground(s) of rejection. Applicant's Amendment received February 11, 2002, necessitated the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 10-12, 14-18, 20-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bimczok et al. (5,961,999) in view of Traupe et al. (5,759,584).

Art Unit: 1617

Bimczok et al. teach a method of skin care. Disclosed is a skin care preparation in the form of an emulsion comprising 3% polyglyceryl-3-methylglucose distearate and 0.5% citric acid. Lactic acid and citric acid are disclosed as interchangeable. The reference fails to teach topically applying to blemished or acned skin. See Col. 1, line 10-Col. 8, line 65.

Traupe et al. teach a method for treating skin afflicted with blemishes or acne with a composition comprising distilled wool wax acids and at least one monoglycerol monocarboxylic acid monoester. Alpha-hydroxy acids are disclosed as the main constituents of wool wax acids. See Col. 1, line 45-Col. 8, line 60.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the exemplified composition of Bimczok by substituting the citric acid in Example 1 for lactic acid and obtain a method of treating blemished skin or acne by applying a composition comprising polyglyceryl-3-methylglucose distearate and lactic acid because Bimczok teaches lactic acid as a preferred alpha hydroxy acid for use in his composition and further teaches citric acid and lactic acid as interchangeable alpha hydroxy acids.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the teachings of Traupe et al. into the invention of Bimczok et al. and obtain a method of topically applying a composition to blemished or acned skin because a) Bimczok et al. teach their composition for application to wrinkles and wrinkles are blemishes, wherein blemishes are defined as imperfections that mar or impair; a flaw or defect¹; b) Bimczok et al. and Traupe et al. both teach cosmetic skin care compositions comprising alpha hydroxy

¹ *The American Heritage® Dictionary of the English Language, Third Edition* copyright © 1992 by Houghton Mifflin Company. Electronic version licensed from INSO Corporation; further reproduction

Art Unit: 1617

acids as active agents, and it is well established that cosmetic compositions comprising alpha hydroxy acids treat acne, and; c) Traupe et al. teach their compositions as being applied to acned skin for the treatment of acne; thus, one would expect the alpha hydroxy acids in the composition of Bimczok et al. to have similar effects as those in the composition of Traupe et al.; hence, teaching the composition of Bimczok et al. as topically applied to acned skin would be within the skill of one in the art.

Claims 10-12, 14-18, and 20-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Muller et al. (6,248,338) in view of Traupe et al..

Muller et al. teach compositions for the cleansing and caring for skin. Disclosed is an oil in water cream comprising 3% polyglyceryl-3 methylglucose distearate. It is disclosed that lactic acid can be added to the compositions of the invention to regulate pH. The reference fails to teach applying to blemished or acned skin. See Col. 5, line 10-Col. 26, line 40.

Traupe et al. is applied as discussed above.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the exemplified composition of Muller et al. by adding lactic acid and obtain a method of treating blemished skin or acne by applying a composition comprising polyglyceryl-3-methylglucose distearate and lactic acid because Muller teaches alpha hydroxy acids in his composition as pH regulators.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the teachings of Traupe et al. into the invention of Muller et al. and obtain a method of topically applying a composition to blemished or acned skin because a)

Art Unit: 1617

Bimczok et al. and Traupe et al. both teach cosmetic skin care compositions comprising alpha hydroxy acids as active agents, and it is well established that cosmetic compositions comprising alpha hydroxy acids treat acne, and; c) Traupe et al. teach their compositions as being applied to acned skin for the treatment of acne; thus, one would expect the alpha hydroxy acids in the composition of Muller et al. to have similar effects as those in the composition of Traupe et al.; hence, teaching the composition of Muller et al. as topically applied to acned skin would be within the skill of one in the art.

The claimed subject matter fails to patentably distinguish over the state of the art as represented by the cited references. Therefore, the claims are properly rejected under 35 U.S.C. § 103.

Unexpected Results

It is applicant's burden to demonstrate unexpected results over the closest prior art. See MPEP 716.02, also 716.02 (a) - (g). Furthermore, the unexpected results should be demonstrated with evidence that the differences in results are in fact unexpected and unobvious and of both statistical and practical significance. *Ex parte Gelles*, 22 USPQ2d 1318, 1319 (Bd. Pat. App. & Inter. 1992). Moreover, evidence as to any unexpected benefits must be "clear and convincing" *In re Lohr*, 137 USPQ 548 (CCPA 1963), and be of a scope reasonably commensurate with the scope of the subject matter claimed, *In re Linder*, 173 USPQ 356 (CCPA 1972).

In the instant case, the data on pages 18-22 of the specification have been considered but not found persuasive because the data merely demonstrate the instant composition. There are no related unexpected results.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lauren Q Wells whose telephone number is (703) 305-1878. The examiner can normally be reached on T-F (6-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Minna Moezie can be reached on (703) 308-4612. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications and (703) 872-9307 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1234.

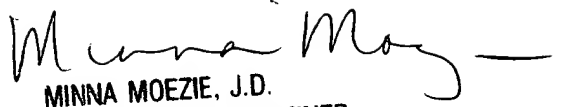
Application/Control Number: 09/557,376

Page 7

Art Unit: 1617

lqw

March 21, 2002


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